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In the Supreme Court of the United States.

OCTOBER TERM, 1903.

Supreme Court
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JAMES H. McKENNEY,
Clerk

AH HOW, ALIAS LOUIE AH HOW, APPELLANT, v. THE UNITED STATES. — No. 307.

CHU DO, ALIAS CHU GEE, APPELLANT, v. THE UNITED STATES. — No. 308.

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APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

REPLY BRIEF FOR THE UNITED STATES, WITH ESPECIAL REFERENCE TO THE BRIEF FILED BY LEAVE OF COURT ON BEHALF OF THE CHINESE CHARITABLE AND BENEVOLENT ASSOCIATION OF NEW YORK.

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I do not think it is necessary to notice Mr. Kohler's argument at length. He has himself in previous cases addressed the same line of argument to the court.

Mr. Kohler charges that the Government makes an entirely unauthorized and unjustified attack upon Commissioner McGettrick's certificates. I spoke of the notorious use of such certificates, and said that the laws providing for all legitimate Chinese certificates do not authorize these peculiar certificates, and certainly do not warrant the use made of them, and urged the correctness of the commissioner's limitation of the certificate as evidence. I say again that the purchase and sale of McGettrick certificates, and the fraudulent use of them, are notorious in the history of the enforcement of the Chinese-exclusion laws. For instance, four such certificates were recently produced by Chinamen at a hearing in the northern district of Ohio. (See post.) Judge Ray in the northern district of New York has excluded "McGettrick certificates." (*United States* v. *Lew Poy Dew*, 119 Fed. Rep., 786.) In the course of his opinion, Judge Ray says: "Evidence was given that this man McGettrick was engaged in the business of making and selling such certificates." (p. 789.)

Mr. Kohler says he will avoid any such sweeping and unfounded generalizations, and proceeds to make generalizations by charging in effect that recent Government arrests of Chinese persons have been made in pursuance of nefarious schemes, as part of a plan of oppression, extortion, and bribery, in order to force the sale of other commissioner's certificates of discharge, which, of

course, are the very kind of certificates that the Government is seeking to remove from the field, and that, in use at least, the McGettrick certificates were and are.

The court, I take it, is not concerned, nor is the Government here concerned, with the cause of removal of one Chinese inspector referred to and the transfer of another to a different field of service. On the other hand, both the court and counsel are concerned with one McGettrick certificate at least.

My statement, which counsel for appellants refer to as rather ingenuous (p. 6 of that brief), simply meant that the same witnesses testified in precisely the same way as to merchant occupation in several of the cases—so much so that in one case the testimony was simply stipulated—when the usual nature of these Chinese partnerships, with an indefinite number of "partners" constantly changing, is evident from the testimony itself. Counsel say, "*Each was a merchant, each a member of the same firm at the same place of business;*" but the commissioner properly held that this was not so. His decision in effect is that while they were performing ordinary mercantile duties about a shop rather than performing manual labor, they were not merchants, and this was correct. It was at least strange that upon these chance arrests—chance in the sense that there was no apparent connection between the Chinamen, except that two were working in the same laundry

in Brooklyn and the third in a laundry a block away—all three should claim to have been merchants at the same time in the same firm located in the city of New York.

The genuineness of the McGettrick certificate in the *Lew Guey* case was *not* admitted. (Appellant's brief, p. 23.) The validity of the signature only was not objected to. (Rec., p. 9.) The Government strenuously objected to the admission of the certificate, "as in no sense proving the judgment alleged to have been rendered by Mr. McGettrick in this case of Lew Guey." The commissioner admitted the certificate "as showing a hearing before Commissioner McGettrick on the date named in the case of a man by the name of Lew Guey." The whole attitude of the Government, in dealing with its alleged validity and force, was intended to impeach it and did impeach it beyond the limited scope which the commissioner's decision gave it. (Rec., pp. 9–10.)

Without taking up the intricacies and full extent of counsel's contentions, I submit the following brief statement of the propositions of the Government, which I believe are impregnable and fully answer the opposing arguments:

THE GOVERNMENT PROPOSITIONS.

That Chinese laborers in this country either were here before May 3, 1894, and ought to have registered under the acts of 1892 and 1893, and if they did not are subject to deportation; or if they

2729E

were not here then, they have entered since, contrary to the prohibition of the treaty and the law, unless they reentered as "returning laborers" and possessed the proper certificate as such.

That whether a given Chinese person is a laborer or not is the very question confided to a commissioner to decide.

That the exceptions to the certificate requirements in the case of domiciled merchants returning to this country under the *Lau Ow Bew* decision, and in the case of a legitimate wife or minor children of a domiciled merchant under the *Gue Lim* decision, give no right whatever to Chinese laborers to be in this country without certificates.

That the law defines a laborer and a merchant, and those claiming to be merchants must bring themselves clearly within the definition and conditions, whether they are entering originally, or are reentering, or have been arrested as laborers and are defending against that charge, always remembering that the status in fact in the latter case is to be settled by the commissioner, and that the opposing argument is merely an attempt through the suggestion of refinements and distinctions to get around and behind the commissioner's findings.

That there is no room in the law for the notion that a Chinese person, technically a minor, whose claim, if it should be made, that he is a citizen by birth is not established, who has merely been here for an uncertain time and is found to be a laborer in fact, can escape the result of that status merely

because of his minority, or because he was here for a certain time during a minority of still tenderer years. Nor is there any room in the law for the contention that a Chinaman who validly entered as a merchant may in *bona fide* cases afterwards become a laborer and remain here as such. That is merely one of the numerous remote suggestions in Mr. Kohler's brief. I am aware of no such cases. It will be time enough to consider that point when a case is presented wherein there is no doubt of the original legitimate entry as merchant, and no doubt either of the subsequent *bona fide* change to the laboring class. The suggestion is highly characteristic of the shifting and illusory character of Chinese claims.

It is well to recall not only that the treaty and laws forbid the coming here or remaining here of Chinese laborers, with a certain narrow exception (returning laborers under Article II of the treaty of 1894), but that both treaty and laws explicitly and fully name the privileged classes who may come and reside here. Strictly, not even Chinese members of the learned professions could practice their professions here unless they genuinely came under one of the privileged classes, viz: "Officials, teachers, students, or merchants, travelers for curiosity or pleasure." (Art. III of the treaty of 1894.) We do not need to carry the argument to that point; we are not dealing here with any such Chinese persons. The effort has been made on many occasions to shade and mitigate the

2729

meaning of the law and to show that a particular person was not a laborer, but was in some category between the laborers and the privileged classes, and therefore was not excluded, but fell within the liberality and equity, so to speak, of the privileged-class category; or else that he was so definitely related to one of the privileged classes as to be attached thereto. But the definitions and intention of the law do not permit such reasoning. That is not the true conception and theory on which the law is founded. The enforcement of the law, of course, seems harsh to the people affected, even where the law has plainly been violated. It seems oppressive to the offender and to many other people, in any case, to send him back to China. Except in that sense, I venture the assertion, and I entertain the conviction, that there is not one case in which the rigorous and therefore proper enforcement of the law really operates harshly and oppressively to the individual, where there are a hundred cases in which clandestineness, fraud, and perjury, respecting both the entry into the country and the remaining here, are receiving their meet penalty when deportation is effected. The true theory of the law is indeed quite different. It is manifest, for instance, that a "merchant's clerk," or an "accountant," or a "manager," is not a merchant and does not belong to any other of the excepted classes. Such people are either actually or constructively laborers; and on the whole

situation the conception expressed in 22 Opinions, 130, 132, that "the true theory is not that all Chinese persons may enter this country who are not forbidden, but that only those are entitled to enter who are expressly allowed," gives the proper view of the law.

I need add nothing to what was said in my previous brief on the claim of citizenship, and on the view of that question entertained by the court as revealed by the *Chin Bak Kan* opinion. The evidence, both as to the merchant classes and the citizenship cases, speaks for itself, and the commissioner's findings must be affirmed.

To illustrate to the court by a recent instance how difficult it is to enforce these laws, and how new avenues and loopholes of escape are constantly opened which the Government under serious embarrassments is endeavoring to close and keep closed, I may refer to certain cases heard and decided within the last month before the district judge for the northern district of Ohio. As I have stated above, four "McGettrick certificates "appeared in those cases. They are not yet reported, and I give extracts from the stenographer's transcript on the bill of exceptions in an associated case in an appendix. The question was raised at the outset whether the individuals arrested were in fact Chinese persons. The testimony showing that they were came from the Government inspectors and from a native Chinese interpreter and was positive and clear. One of the Chinamen

admitted his birth in China of Chinese parents, and both ethnologically and racially the men were shown to be Chinese persons as completely as any such fact ever was or could be shown in the world. Yet the court held that the Government would be obliged to show by expert scientific testimony, if possible, the fact that the persons were Chinese, and upon failure to do this to the satisfaction of the judge the Chinamen were discharged. In the test case, at least, if not the others, the Chinaman had entered clandestinely and recently, and was standing in court marked by all the unmistakable characteristics of feature, frame, and garb as the ordinary "Chinese person."

I venture to give another instance of the difficulties in enforcing the law. In certain portions of the country Chinese, claiming by a set phrase to be citizens and then standing absolutely mute, are excluded by the executive officers after due examination. They obtain habeas corpus and the cases are referred to a commissioner sitting as special referee for the court. They are not the Government's cases, but the cases of the Chinese against the Government. The commissioner claims for this service a fee which no existing law allows, and the United States can not therefore pay, and, indeed, ought not to be called upon to pay. The Chinamen willingly pay the fee when they have any reason to think the commissioner's finding is in their favor. Surely

there is some remedy or protection for the commissioner—as, for example, by an appropriate order upon the moving parties—short of the result, which is imminent, I am authoritatively informed, that if the United States does not pay the fees claimed, the petitioners will all be discharged. Here is another evidence that the Chinese deceive the courts and fraudulently use them. On the theory that the writ is always matter of course, the claim disallowed by the executive is again set up, and by the mere assertion of citizenship the inquiry shifts from the executive authority to the courts. In this peculiar dilemma many Chinamen may walk out of court by grace of discharge under habeas corpus certified as citizens of the United States without a shadow of right to the title; and the United States appears to be powerless, at least for the time being.

It is very doubtful indeed whether the Government has any right of appeal or review respecting the point decided in Ohio, and yet that point is fundamental and certainty about it essential in every district of the United States; and whether or not there would be a right of appeal in the habeas corpus cases great injury would be done and numerous Chinamen so far further fortified in their claim to be citizens if the writs so freely issued are sustained and the Chinamen discharged because the Government will not pay the referee's fees.

I give in an appendix the views of Judge Wheeler, of the Vermont district, on the right to the writ under such circumstances, in which he construes the meaning of the recent cases of *Chin Bak Kan* and the *Japanese Immigrant Case*. But, so far, Judge Wheeler stands alone in thus applying the judgments of the court.

Regarding the strictest notions of the writ of habeas corpus as sacred, there appears to be an obvious and reasonable distinction, susceptible of being shown with strong presumption in a petition, between a *bona fide* and meritorious case which might arise and the interminable list of Chinese applications following careful executive examination and exclusion.

I say, with knowledge that the implication of the statement is grave, and without meaning to transgress the bounds of proper respect, that these two occurrences do not appear to me to constitute ordinary checks in litigation which are to be anticipated just because the judicial function is to decide between opposing views. It has appeared to me, after due deliberation, entirely proper to apprise the court of these current events in the executive and judicial dealings with the law, looking especially to the relations of the individual members of the court as circuit justices.

In case the court shall think that I have broken the bounds of proper reserve as to the particular record in speaking of these incidents, or opposing

counsel should ask, "What have such facts to do with the present cases and records?" I beg to say, with deference to the court and with respect to counsel, that they have this to do with it: In such ways, by protean shifts and devices of the Chinese, by proceedings and claims which deceive and fraudulently use the courts, by conceptions of the law which appear to be contrary to the reason and common sense of mankind, and by delays, continuances, and appeals the law is ignored and made nullity. The different methods (not, of course, including the courts' functions in hearing and deciding) are all connected and are part of a confederated and conspiring scheme. I do not mean by this to suggest that the Chinese association, whose brief was filed herein by leave of court, acts for any other purposes than it professes by its title; but there *are* associations which make a business of smuggling Chinese into the country and defending their right to remain here after they have been smuggled in. As opposed to all this, this court has laid down principles and settled the law so as to constitute a sure guide for the executive and the inferior tribunals, in these cases. in the recent occurrences above detailed, and in any other Chinese situations conceivable or likely. There is no excuse for the continued evasions and defiance of the law, and since the Government is charged with the duty of enforcing these existing laws (as in a very just

sense the courts also are), and relies upon this court and its judgments in its endeavors to do so, if the court shall approve the Government's contentions on the present motions, its authoritative pronouncement herein will notify inferior courts, parties, and counsel of the meaning of the court's judgments and the reach of its mandates, and will go far to check the various evils and maintain the scope and force of the law.

I submit, respectfully, that the motions herein should be granted.

HENRY M. HOYT,
Solicitor-General.

APPENDIX A.

ABSTRACT OF AND MINUTES FROM STENOGRAPHER'S TRANSCRIPT ON BILL OF EXCEPTIONS IN UNITED STATES v. HUNG CHANG, IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION.

(The Government is as yet unable to obtain the bill of exceptions as signed or to be signed.)

In the case of *United States* v. *Hung Chang* the testimony of the Chinese inspector showed that the Chinaman was taken into custody on a railroad train at Cleveland; that, according to his own statement, he had come from "Vancouver and Buffalo." This statement implies a recent clandestine entry, which is corroborated by other statements, *ut infra*. On being asked the question whether the Chinaman, plainly such by his general appearance, garb, queue, etc., was in fact a Chinese person, the court, on the objection that the witness is not shown to be qualified to answer the question, permitted the inspector to be cross-examined on that subject. On the cross-examination, running to great length beyond the witness's familiarity with Chinese from his constant dealings with them as inspector, to ethnology and history, and the distinctions between Koreans and Chinamen, etc., the court sustained the objection on the ground "that if judgment of deportation were rendered against one other than a Chinese person, the most sacred guaranties of the Constitution, of the organic law, would be violated."

The chief Chinese inspector was put upon the stand, and on the same sort of an examination and cross-examination, in which the court interposed, the court pointing out, for instance, that an answer of the witness beginning to describe peculiar characteristics of Chinese features, etc., is "an assumption that he knows a Chinaman when he sees one. He must first know that before he can know that the characteristic belongs to a Chinese person," the objection was sustained, and this witness's testimony also was excluded.

The Chinese interpreter, a Chinaman, testified that he himself was a Chinese person; that he had lived in the United States twenty-five years; that he was born in China, in the Canton district; that from his own knowledge so acquired he is able to determine whether or not a certain person is a Chinese person or a person of Chinese descent; that Hung Chang is a Chinese person. This testimony was objected to, and upon cross-examination the court asked the following question:

> First, have you read any book upon the subject of the racial distinctions between the Chinese and other people?

The interpreter's testimony on this line was also excluded. On redirect examination this interpreter, himself a Chinaman, further testified that Hung Chang conversed with him at the county jail in the Chinese language of the Sun-ling district near Canton; that Hung Chang admitted he was born in China; that he had recently entered the country from Canada; that he said he was a full-blooded Chinese; that his father and mother were Chinese; that his grandfather and grandmother were Chinese. As to this testimony

of an admission, the court overruled the objection and admitted the evidence.

Upon a stipulation that Hung Chang was himself in court under a subpœna, he was asked to state the nationality and blood of his father and mother; but this question was objected to, and the objection was sustained by the court.

A motion to discharge the Chinaman on the ground that there was no evidence followed, and upon argument on that motion, and in response to the contention of the Government that when a *prima facie* case was made out the burden of proof was upon the Chinaman to show that he was entitled to be and remain in this country, the court replied: "Not on that issue [meaning the race issue]. Upon the question as to whether the person arrested is a Chinese person the law is silent as to the character of proof."

As to the Chinese interpreter's testimony the court says to the Government counsel:

> What would you say on that point? The testimony of Moy was that this defendant, in answer to questions, stated that he was born in China; that his parents and grandparents were full-blooded Chinese persons. Would the latter statement, as to who his parents were, be anything else than opinion evidence as to blood or race on the part of the defendant?

And again (omitting in the main the Government counsel's part in the colloquy):

> The COURT. Then you came directly to that. As I suggested before, he has said that his father and mother were Chinese persons. Is that anything more than his opinion as to the character of blood flowing in their veins? * * *

Is it admitted that it is an impossible question to answer in science, to what race a man belongs; that that question can not be ascertained by a scientist without inquiry into his geneality [genealogy]? * * *

It is not a question of parentage, but of blood. Suppose this person has no known parents. The question is, Is the blood flowing in his veins that of one race or another. Is that a question that can not be answered in science? Is that your position? * * * But you are stating that it is impossible, otherwise than by the character of the proof you have offered, to prove the question made. I wanted to know if that is the position of the Government—that it is absolutely impossible to be determined scientifically, as the difference of species in animals is determined.

* * * * *

The UNITED STATES ATTORNEY. I simply advert to the character of the proof, not to the strength of it.

The COURT. It is opinion testimony. The weight of opinion testimony goes to whether one has knowledge or has not. There are scientists who deal with these things in the animal kingdom, who pretend to be able to make those distinctions, and give their reasons; such great minds as Darwin and Huxley devoted themselves to the recognizing and classifying the distinctions that exist between species. Now, is it your attitude that there is no such possibility with respect to the human race? * * *

What the Government may do through its executive officers we have nothing to do with in this court. The Government can say that you may go out and arrest anyone whom you please, whom you suspect to be a Chinese person, and deport them. We

can not interfere with that. But when the Government provides that so far as arresting a person within the body of the community is concerned, it shall be done in the courts of justice, then it seems to be an intimation that the ordinary rules of courts of justice shall prevail and shall guide in determining the issues thus raised. * * * But when you may arrest anyone in the body of the country by process of law, affidavit, and warrant, and bring them to the bar of a court charged with being of a race practically deprived of rights that would exist if they were not of that race, that is another matter; because this arrest may be directed against any person in the community, at the will of the maker of the affidavit. He is not excluded from arresting a citizen of the United States, a subject of Great Britain, or a citizen of any nationality. They may be brought in here under this charge, and the court can not distinguish, as they come in, whether they are persons who have rights or persons who have none. * * * The question has never been directly made, so far as I have been able to discover, of the imprisonment or deprivation of liberty of a person charged under this act, which was necessary to take him to the point of deportation and ultimately to China, where the person was not a resident or never had been a resident of China; that question, so far as I have been able to discover, has not been decided. I am inclined to think that in the case of a person born in Great Britain, arrested in this country, found to be a Chinese person and deported to China, when such a case as that comes up the court will hold that it amounts to banishment, that it amounts to sending one

to penal servitude, or is in the nature of it, and is a punishment which ranks with imprisonment at hard labor. * * * In this case there is no such element. * * * Undoubtedly, if the person here charged had in open court stated that he was, for the purposes of this issue, the trial of this issue, a Chinese person, the court, as in all other cases, would accept his position on that issue. * * * We have substituted for that the testimony of Moy, who states that in answer to certain questions put by him, dictated by O'Neill, the Chinese agent of the Government, defendant stated that he was born in China, and that his parents and grandparents were full-blooded Chinese. * * * This is not an ordinary confession, * * * it is a translated confession. * * * It rests in the ability of the interpreter; the exactness of the language of the translation rests in the ability of the translator. The one statement that is reputed to have been made—that he was born in China—would not itself be decisive at all on the question at issue, which is whether he was a Chinese person; the fact that he was born in China may or may not have made him a subject of China. The statement that his parents and grandparents were full-blooded Chinese was a matter of opinion, of course, on this racial question. So far as the peculiarities and characteristics of the person in court charged are concerned, that he is of the complexion described, could not without other testimony convince me of what race he was. That anyone could distinguish this person, with the little knowledge that I have on the subject, from a Japanese or from the many others of the Mongolian race, seems impossible. * * * It

is the best evidence in its nature that is required, not the best evidence available in the particular case. That there are means of making racial distinctions, observing, deciding with the accuracy of science, as to what race a man belongs to, must certainly be true. * * *

The fact that Hung Chang was born in China would not be conclusive in the absence of evidence as to what the law of China was, that he was a subject. In view of the fact that this is the issue, is he or is he not a Chinese person; that there is evidence in its nature better than the opinion testimony offered; in view of the fact, even if we accept it as a fact, that the defendant was born in China is not conclusive on the subject of his being a Chinese person, naturally; and that his statement, taking into account fully the circumstances under which this statement was given, with respect to his parentage or the race of his parents, was only a matter of opinion; that the proof which ought to be required in court, at least, the demand for proof upon so important an issue has not been met; the motion is therefore granted and the defendant discharged.

So that in this way a new burden of proof—a burden so construed as to be impossible to shoulder—is placed upon the Government, and the Chinese burden of proof under the law vanishes completely and finally. And under this ruling a man's own statements as to his birth and parentage are not received as proof, and the Canton Chinaman or coolie, plainly to be recognized as such, standing in court as he has appeared before the world for centuries, nevertheless is not a "Chinese person."

APPENDIX B.

United States district court, district of Vermont.

IN RE MOY QUONG SHING ET ALS. ON HABEAS CORPUS.

(Not yet reported.)

OCTOBER 10, 1903.

WHEELER, J.

The persons detained are of the Chinese race, lately from China, and are restrained of their liberty at the port of Richford, where they sought to enter this country.

The petition set forth restraint in a detention house by persons acting as officers of the United States, and challenged their authority and the legality of their proceedings. The return of the petitionee, Weeks, shows that he is an officer of immigration, detaining the men under direction of Officer Schell, whose return, filed by leave of court, shows that he is an officer of immigration under control of the Commissioner-General in charge of this port by designation of the Secretary of Commerce and Labor. This seems to show regular and sufficient authority, within the act of 1903 (32 Stat., 828), placing jurisdiction in the Department of Commerce and Labor.

The proofs show that the men came by train and presented themselves for admission, and when reached were informed that they would then be examined as to their right to come in, and that,

being questioned through an interpreter, they said they had been told by their parents that they were born within the United States, of which they had no recollection, and claimed to come in as native-born citizens. That such citizen, of whatever race, on arriving at a port of this country is entitled to come is not questioned or questionable. The contention now is that when such a claim is made the executive officers have not authority to pass upon it, and that it must go for decision, if denied, to courts or judicial officers on some proper proceeding, of which this is said to be one. That the legislative department may exclude any race or classes of any race not citizens from the country, and identify and return those not entitled to come by executive as well as judicial officers seems to be too well settled by numerous and uniform decisions of the Supreme Court to require or warrant citations. And in *Chin Bak Kan* v. *United States* (186 U. S., 193), Mr. Chief Justice Fuller for the court said, after referring to *United States* v. *Wong Kim Ark*, where it was held that Chinese persons born in the United States are citizens:

> It is impossible for us to hold that it is not competent for Congress to empower a United States commissioner to determine the various facts on which citizenship depends under that decision.

It seems equally impossible to hold that when Congress can commit the execution of the law and the decisions of questions arising therein to the decision of executive officers it can not also include the fact as to place of birth. The judicial powers of a commissioner are wholly conferred by act of Congress; and power to decide questions arising in executive proceedings may as well be

conferred upon executive officers as upon others. These questions as to the place of birth of these applicants arose for decision with other questions before this officer, and no other way but for him to decide them is made apparent.

It is claimed that the proceedings of this immigration officer, Schell, did not so conform to the rights of the applicants that the detention pursuant thereto was lawful. In the *Japanese Immigrant Case* (189 U. S., 86, at 100), Mr. Justice Harlan said:

> But this court has never held, nor must we now be understood as holding, that administrative officers, when executing the provisions of a statute involving the liberty of persons, may disregard the fundamental principles that inhere in "due process of law" as understood at the time of the adoption of the Constitution. One of these principles is that no person shall be deprived of his liberty without opportunity, at some time, to be heard, before such officers, in respect of the matters upon which that liberty depends—not necessarily an opportunity upon a regular, set occasion, and according to the forms of judicial procedure, but one that will secure the prompt, vigorous action contemplated by Congress, and at the same time be appropriate to the nature of the case upon which such officers are required to act. Therefore, it is not competent for the Secretary of the Treasury, or any executive officer, at any time within the year limited by the statute, arbitrarily to cause an alien who has entered the country and has become subject in all respects to its jurisdiction and a part of its population, although alleged to be illegally here, to be taken into custody and deported

without giving him all opportunity to be heard upon the questions involving his right to be and remain in the United States. No such arbitrary power can exist where the principles involved in due process of law are recognized.

It appears that the immigration officer is governed by Chinese regulations made by the Department of Commerce and Labor, among which are:

Rule 6. Immediately upon the arrival of Chinese persons at any port mentioned in rule 4 it shall be the duty of the officer in charge of the administration of the Chinese-exclusion laws to adopt suitable means to prevent communication with them by any persons other than officials under his control, to have said Chinese persons examined promptly, as by law provided, touching their rights to admission, and to permit those proving such right to land.

Rule 7. The examination prescribed in rule 6 should be separate and apart from the public, in the presence of Government officials and such witness or witnesses only as the examining officer shall designate, and if, upon the conclusion thereof, the Chinese applicant for admission is adjudged to be inadmissible, he should be advised of his right of appeal and his counsel should be permitted, after duly filing notice of appeal, to examine, but not to make copies of, the evidence upon which the excluding decision is based.

Rule 21. The burden of proof in all cases rests upon Chinese persons claiming the right of admission to or residence within the United States to establish such right affirmatively and satisfactorily to the appropriate Government officers, and in no case in which the law prescribes the nature of the

> evidence to establish such right shall other evidence be accepted in lieu thereof, and in every doubtful case the benefit of the doubt shall be given by administrative officers to the United States Government.

It also appears that in these cases the officer in charge, with commendable care, informed each applicant that other witnesses would be heard and sent for, if there were any, and that no claim was made that there were any.

In the *Japanese Immigrant Case* Mr. Justice Harlan further said:

> The traverse to the return made by the immigration inspector shows upon its face that she was before that officer, pending the investigation of her right to be in the United States, and made answers to questions propounded to her. It is true that she pleads a want of knowledge of our language; that she did not understand the nature and import of the questions propounded to her; that the investigation made was a "pretended one," and that she did not at the time know that the investigation had reference to her being deported from the country. These considerations can not justify the intervention of the courts.

Here the applicants presented themselves for examination for admission, and were held till, and were present when, it was had, and knew what was going on. They came for the examination, and should have come prepared with any evidence they had and wished to introduce to maintain their claims. That others were kept from them before or during the examination, or any prejudice to them in consequence of the rule is not shown. They had, so far as appears, all the examination they wanted.

The rule of evidence prescribed may put upon the applicants more than proof to the satisfaction of the officer and require that beyond doubt; but the rules of evidence go with the authority to decide, and are included in it; and their correctness or their application furnishes no ground for interference.

Persons remanded.

O